

Remarks

In response to the Restriction Requirement mailed March 24, 2006, Applicant provisionally elects, with traverse, the invention of claims 1-38 and 41-44 (Group I), directed to an isolated nucleic acid molecule comprising a nucleic acid sequence encoding a fusion polypeptide comprising a reporter protein and at least two different heterologous protein destabilization sequences, which fusion polypeptide has a reduced half-life relative to a corresponding reporter protein which lacks the heterologous protein destabilization sequences or has a reduced half-life relative to a corresponding reporter protein which has one of the heterologous protein destabilization sequences, an isolated nucleic acid molecule comprising a nucleic acid sequence comprising an open reading frame for a reporter protein and at least two heterologous destabilization sequences, wherein one of the heterologous destabilization sequences is a mRNA destabilization sequence and another is a heterologous protein destabilization sequence, an isolated nucleic acid molecule comprising a nucleic acid sequence comprising an open reading frame for a luciferase and at least one heterologous destabilization sequence, wherein a majority of codons in the open reading frame for the luciferase are codons which are preferentially employed in a selected host cell, and a vector or host cell having the isolated nucleic acid molecule.

In the Restriction Requirement, Applicant is also required to elect a DNA sequence from one of SEQ ID Nos. 47-49, 66, and 69-80, although the Examiner indicated this was not an election of species. The general explanation for the further election is that each nucleic acid molecule is an independent chemical entity and requires an independent search. The Examiner apparently attempts to circumvent substantiating a Restriction Requirement for each specific sequence or a species election. It is Applicant's position that they are entitled to a generic independent claim, i.e., one not specifying a particular sequence. Nevertheless, in order to comply with the request to elect a specific sequence, Applicant provisionally elects, with traverse, SEQ ID NO: 72. Reconsideration and withdrawal of the Restriction Requirement, in view of the remarks below, is respectfully requested.

The Restriction Requirement is traversed on the basis that the inventions are closely related. That is, claims directed to an isolated nucleic acid molecule comprising a nucleic acid sequence encoding a fusion polypeptide comprising a reporter protein and at least two different heterologous protein destabilization sequences, which fusion polypeptide has a reduced half-life

relative to a corresponding reporter protein which lacks the heterologous protein destabilization sequences or has a reduced half-life relative to a corresponding reporter protein which has one of the heterologous protein destabilization sequences, an isolated nucleic acid molecule comprising a nucleic acid sequence comprising an open reading frame for a reporter protein and at least two heterologous destabilization sequences, wherein one of the heterologous destabilization sequences is a mRNA destabilization sequence and another is a heterologous protein destabilization sequence, an isolated nucleic acid molecule comprising a nucleic acid sequence comprising an open reading frame for a luciferase and at least one heterologous destabilization sequence, wherein a majority of codons in the open reading frame for the luciferase are codons which are preferentially employed in a selected host cell, and a vector or host cell having the isolated nucleic acid molecule (claims 1-38 and 41-44; Group I) are clearly related to claims directed to a fusion polypeptide encoded by the nucleic acid molecule (claims 39-40; Group II) and claims directed to a method of using the vector having the nucleic molecule (claim 45; Group III).

The Restriction Requirement is also traversed on the basis that Restriction Requirements are optional in all cases. M.P.E.P. § 803. If the search and examination of at least a portion of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it arguably may include claims to distinct or independent inventions. M.P.E.P. § 803. Moreover, it is submitted that Applicant should not be required to incur the additional costs associated with the filing of multiple divisional applications in order to obtain protection for the claimed subject matter. Due to the relatedness of the subject matter of the claims in Group I and Groups II-III as discussed above, those Groups can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner. In particular, the claims in Group I and Group II can be efficiently and effectively searched in a single search with no additional burden placed on the Examiner, as the claims in those Groups are in the same class (435) and same subclass (subclass 189) for search purposes.

Further, as elected claims 1, 2 and 3 link the invention of Groups I and II, and elected claim 35 links the invention of Groups I and III, claims 1-44 should be examined in the same application. M.P.E.P. § 809.03.

Serial No.: 10/664,341

Filing Date: September 16, 2003

Title: RAPIDLY DEGRADED REPORTER FUSION PROTEINS

In the event the Examiner does not examine claim 45 (Group III) with the claims in Group I, Applicant's Representatives respectfully request rejoinder of claim 45 with the claims in Group I upon a notice of allowance for the claims in Group I. M.P.E.P. § 821.04.

Moreover, as mentioned above, regardless of the absence of a species election and the recitation of specific sequences in dependent claims, Applicant is entitled to have a generic claim searched and examined in the present application.

The Restriction Requirement is properly traversed. Accordingly, reconsideration and withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,

ALEXEY ZDANOVSKY ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6959

Date

April 24, 2006

~~By Janet E. Embretson~~

Janet E. Embretson
Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 24 day of April, 2006.

Name

Dawn M. Poole

Signature

Dawn M. Poole